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*Stephens v. Southern Pacific R. Co.*, 109 Cal. 86, 41 Pac. 783, 29 L. R. A. 751.

In a lease of railroad property with a covenant exempting the railroad from liability for damages by fire it was held that the covenant passed with the land to the assignee of the lessor and the lease invested the assignee with the same right of protection and to the same extent as the lessor might have asserted. *Northern Pacific R. Co. v. McClure*, 9 N. D. 73, 81 N. W. 52, 47 L. R. A. 149.

For a discussion of the principles relative to the validity of such covenants, see 2 VA. LAW REV. 392.

TRADE UNIONS—REMEDY FOR UNLAWFUL EXPULSION OF MEMBERS.—The plaintiffs were suspended from the defendant trade union without notice of charges or opportunity to be heard. A suit was brought in equity to revoke the suspension. *Held*, the suspension was unlawful and the plaintiffs are restored to membership. *Gilmore v. Palmer*, 179 N. Y. Supp. 1. See NOTES, p. 531.

WATER AND WATER COURSES—FLOOD WATERS OF RIVER NOT SURFACE WATERS.—The lands of the appellant and appellee were subject to frequent overflows from an adjacent river. The appellee constructed an embankment which prevented the flood waters from entering upon his lands and which threw them out over the lands of the appellant, causing damage thereby. The appellee maintained that the flood waters from the river were surface waters, and could therefore be diverted from his lands by embankments. The appellant brought an action to recover damages sustained and also to obtain an injunction to prevent further obstructions by the appellee. *Held*, judgment for the appellant. *Gobin v. Piety* (Ind.), 125 N. E. 655.

It is sometimes held that the flood water of a stream which entirely passes beyond its flood banks and spreads over the adjacent country is surface water and may be treated as such by everyone. *Johnson v. Gray's Point Terminal R. Co.*, 111 Mo. App. 378, 85 S. W. 941. Under such a ruling the flood waters of a stream which overflow the flood banks would be subject to the various rules in regard to surface waters.

As to the rights of land owners to obstruct the flow of surface waters upon their land, the authorities are clearly divided. One line of cases adheres to the common law rule that surface water is the common enemy of all, and that a land owner is under no obligation to allow it to flow on or across his land from the land of a higher neighbor, but has the absolute right to shut it out from all access to his land, and no liability attaches for any injury resulting to another therefrom. *Gannon v. Hargadon*, 10 Allen (Mass.) 110; *Benthall v. Seifert*, 77 Ind. 302. Another line of authorities adheres to the civil law rule, by virtue of which lower land is subject to the servitude of receiving the natural flow of surface water from higher or adjoining land. *Martin v. Riddle*, 26 Pa. St. 415. See *Martin v. Jett*, 12 La. 501, 32 Am. Dec. 120, and note. For an exhaustive review of the authorities, see note to *Mizell v. McGowan*, 85 Am. St. Rep. 707, *et seq.* The courts of Vir-

ginia have qualified the common law rule as to surface water, and have held that such surface water can be obstructed only when proper culverts, drains *et cetera* are constructed so that adjacent land owners will not be unduly damaged. See *McGehee v. Tidewater R. Co.*, 108 Va. 508, 62 S. E. 356.

The most satisfactory rule as to flood waters seems to be that if the water becomes severed from the main current never to return and spreads out over the lower ground, it becomes surface water; but if it forms a continuous body with the water flowing in the ordinary channels, or if it departs from such channel presently to return, as by recession of the waters, it is to be regarded as still a part of the stream. *Uhl v. Ohio River R. Co.*, 56 W. Va. 494, 49 S. E. 378. See also *New York, etc., R. Co. v. Hamlet Hay Co.*, 149 Ind. 344, 47 N. E. 1060; *Cass v. Dicks*, 14 Wash. 75, 44 Pac. 113.

In accordance with this view, it has been held that a railroad company has no right to dam up the flood waters of a stream in such a way that the water is discharged upon the lands of lower proprietors, and is liable for the damage resulting thereby. *Evansville, etc., R. Co. v. Scott* (Ind.), 114 N. E. 649. The instant case arose in this same jurisdiction, and since it involved substantially similar facts, the court based its decision upon the ruling in *Evansville, etc., R. Co. v. Scott*, *supra*.